

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
JULIAN ORAZA, DEFENDANT AND APPELLANT.***G.R. No. L-1471. May 20, 1949*

Ponente: MONTEMAYOR, J.

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In the Court of First Instance of Pampanga, the appellant Julian Orazo was prosecuted for serious physical injuries for inflicting upon the offended party Hilario Sison injuries which required medical attendance and took sixty days to heal, and which, during the aforesaid period of time, incapacitated said offended party for the work in which he was theretofore habitually engaged. When first arraigned, he pleaded not guilty, but later, with leave of the court, this plea was withdrawn and, upon rearraignment, he pleaded guilty. After said second plea, and with the permission of the court, he proceeded to prove by his testimony that he had voluntarily surrendered to the authorities after the commission of the crime and that he was a little bit drunk at the time he committed it, his drunkenness not being habitual. The lower court, considering his plea of guilty as well as the other mitigating circumstances, sentenced him to four months of arresto mayor and to pay the costs, at the same time reserving to the offended party the right to claim damages in a separate civil action. From this decision, the defendant appealed, alleging that the penalty is excessive, and that, furthermore, the lower court erred in making the reservation in favor of the offended party to claim damages in a separate civil action, inasmuch as nowhere in the complaint is any claim for damages made, aside from the fact that the reservation made by the offended party was made after the defendant had pleaded guilty to the information.

As regards the penalty imposed by the lower court, the same is clearly not excessive. Counsel for the appellant, in his brief, admits that the penalty of four months of arresto mayor is within the range provided by law, only that, considering the number of mitigating circumstances, namely three, and that the injuries inflicted upon the offended party healed in sixty days and not in ninety days, which is the maximum period mentioned in article 263, paragraph 4, of the Revised Penal Code, the penalty imposed should have been only two months, which is the minimum of the penalty next lower to that prescribed by law. This contention we find to be unfounded. There is no warrant or reason for making any fine distinctions based on the period within which injuries inflicted upon an offended party may have actually healed,—that is, whether they are within the minimum, medium or maximum period, or number of days mentioned in the article of the Revised Penal Code involved. In the present case it is sufficient that the same came under the provisions of article 263, paragraph 4, of the code inasmuch as the period of incapacity and healing of the injuries was more than thirty days but not more than ninety days.

Once the penalty next lower to that prescribed by law is applied because of the presence of two or more mitigating circumstances, the period,—whether it be in the maximum, medium or minimum—should and must be left entirely to the discretion of the trial court, according to the very terms of article 64, paragraph 5, of the Revised Penal Code, which provides that "the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances." (5 Viada, 5th ed., p. 577.)

As to the second point regarding the reservation in favor of the offended party of the right to claim damages in a separate civil action, there is no need to allege in the information that the offended party had suffered damages and intends to make a claim for them. Every person criminally liable for a felony is also civilly liable. (Art. 100, Revised Penal Code.) So, when a complaint or information is filed, even without any allegation of damages and the intention to prove and claim them, it is to be understood that the offender is liable for them, and that, the offended party has the right to prove and claim for them, unless a waiver of the reservation is made. (People vs. Celorico, G. R. No. 45738,[1] 8 Lawyers' Journal, p. 403; United States vs. Heery, 25 Phil., 600.) As a matter of fact, the record in the present case shows that the reservation was made by the court in favor of the offended party previous to the plea of guilty by the appellant. (See page 2, t. s. n. Posadas.)

In view of the foregoing, the decision appealed from is hereby affirmed, with costs.

Moran, C. J., Ozaeta, Paras, Feria, Pablo, Perfecto, Bengzon, Tuason, and Reyes, JJ., concur.

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[1] 67 Phil., 185.

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